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**LO SPAZIO EUROPEO PER LA SICUREZZA MARITTIMA:  
DALL'ISM CODE AL PACCHETTO "ERIKA II"**

Good morning Ladies and Gentlemen.

The objective of my lecture is to give an overview of the latest developments in the EU maritime safety policy and I will focus on the major ones which have been proposed by the Commission after the accident of Erika in December 1990.

But first, a few words on the Transport Directory of the Commission which has been restructured one year ago with the merger of two former directorates that is, the Energy Directorate and the Transport Directorate which are now the single Directorate General Energy and Transport. Our Commissioner is Mrs. Loyola de Palacio who is, at the same time, Transport Commissioner and Vice-President in charge of the relations with the European Parliament. Our General Director is Mr. Lamoureux. There are seven directorates in the DG TREN of which the last, is the Directorate G "Maritime Transport": it is the smallest directorate but quite active. Our new director is Mr. Karamitsos. There are three units in Directorate G: GI, deals with general maritime Policy issues and in particular external relations and research; G II, the Maritime Safety Unit, in charge of developing the legislation on maritime safety and prevention of pollution. The third unity is G III dealing with Short Sea Shipping and ports policy.

Let's start with, a few important figures: maritime transport represents one third of the exchanges within the EU and 90% of exchanges with third countries: for Maritime Safety Unit. This means that Europe is not only a shipping entity but it is also a

coastal entity, therefore we also have a duty to protect the European citizens against the risk of accidents and pollution.

A few dates: the transport policy has started relatively late, in the late seventies, but the maritime safety policy in the European Union is even more recent as it started in 1993 with the adoption by the Commission of a communication on the common policy for safe seas. It has been followed by the adoption of more than 15 directives or Regulations in different areas of maritime safety and prevention of pollution. The two most important recent developments were the adoption of the Erika I and Erika II packages of measures following the sinking of ERIKA.

The legal bases for the development of the maritime safety policy was the cooperation procedure which has now changed to the co-decision procedure. In practice this means that the European Parliament and the Council are legislators at the same level.

Although the overall legislative process has become lengthy and complex, it seems that in our specific sector the legislative process has not been much slowed down by this new co-decision procedure. One of the reasons is the high sensitivity and the strong political pressure to come out with new measures after accidents, the so-called "post accident syndrome".

This reaction to maritime catastrophes is not something which is particular to the European Institutions, but which has already led to important developments in international legislation as well as regional initiatives such as the different memorandums on port state control and even unilateral initiatives (e.g. the US Oil Pollution Act of 1990). Within the Community the first communication on safe seas of 1993 was published after the accidents of the Aegean Sea and of the Shetlands. In 1994, after the tragedy of the Estonia, the Commission also adopted a number of legislations in the area of passengers safety. More recently, the Erika accident led to the adoption of our two packages of measures on Erika.

The Erika I package, which was adopted in March 2000, includes three legislative proposals: two directives focusing on the issue of controls of vessels and one proposed regulation on the accelerated phasing-in of double hull tankers within the Community.

Both Erika I and Erika II are the result of an analysis made by the Commission after the accident of Erika; and the identification of a number of safety-related shortcomings in the shipping sector. A particularly striking fact was the very large number of inspections and controls to which the ERIKA has been subject, none of which having been able to identify the structural failures which were the cause of the accident. Certainly, something had to be done in the area of the control in general.

The accident of the ERIKA also confirmed the opacity of shipping practices. Such opacity is hardly justifiable. Citizens have certain grounds to be concerned when several months after an accident it is impossible to find out who the real owner of a vessel is.

Another conclusion is that the international liability regime for the compensation in case of oil pollution, has a number of limitations such as the amount of the compensation and the slowness of the compensation of the victims.

The first set of proposals, adopted only three months after the accident, included three proposals.

The first of our proposals aims at strengthening the 95/21/EC Directive, the so-called port state control Directive.

Port State Control in Europe is organised under a dual regime: on one side is the 1982 Paris memorandum of understanding (Paris MOU) which is an administrative, non-binding, agreement between a number of countries including non EU countries such as Canada, Russia, Poland and Croatia. On the other hand, the port state control directive aims at strengthening and making mandatory to a number of the Paris MOU procedures. For instance, the target of inspecting 25% of ships calling to a port has become an obligation under the 95/21/EC Directive. A table indicating the percentage of inspections reached by each Member state is published by the Paris MOU secretariat. On this basis, the Commission, if necessary, launches infringement procedures against Member States not complying with such obligation.

With the amendments to the 95/21/EC Directive proposed by the Commission after the sinking of the ERIKA a number of significant changes have been brought to the current port state control

regime. A major novelty is the introduction of a banning provision for ships which have been detained a certain number of times in Europe and which fly the flag of flag states listed in the black list of the Paris MOU. This measure has the character of a sanction against "recidivist" ship-owners and Flag States that have given proof of persistently neglecting the follow-up of ships flying their flag. The Commission will publish the list of banned ships every six months. It is worth noting that several Member States are directly concerned by this measure (Portugal is on the black-list, Italy is close to it, in the grey list) and several acceding countries are equally concerned (Lithuania, Latvia, Cyprus, Malta).

Another remarkable change is the introduction of a concept of mandatory inspections of certain categories of ships. So far, the port state control inspectors decided whether or not to inspect a vessel on the basis of their discretionary power of appreciation. Although a targeting mechanism has been developed in order to assist the inspector in the selection of ships to be inspected, there was no clear-cut obligation of inspection. This is now proposed to change: ships with a very high target factor, as well as ships which are more likely to create a risk to safety or the environment (e.g. oil tankers above 15 years of age) will be the focus of this mandatory inspection regime. In addition, with regard to oil tankers, structural matters will be more closely checked through the obligation of a direct, visual examination by the inspector of the structural condition of the ship, in particular of at least one of the ballast tanks in order to gain a general impression of its possible degree of corrosion.

The second element of the Erika I package is the modification of the existing Directive on classification societies, the 94/57/EC. The 94/57 Directive has introduced a system of EU-wide recognition of classification societies, based on qualitative and quantitative criteria. EU Member States, in their capacity as flag States, can only rely on those recognised societies when authorising classification societies to do statutory tasks on their behalf; so ensuring that the classification societies which operate in Europe are of high quality standard.

Following the accident of Erika, it has been necessary to improve this regime, both as regards the way in which classification societies are recognised and regarding the way their performance is followed up. Thus, the criteria for the recognition are considerably strengthened and new working procedures are imposed, such as, for instance, the obligation in case of change of class to transfer complete file of the survey is transmitted to the other classification society concerned. In order to meet the common concern that sometimes the classification societies do not exercise sufficient control on their regional offices, the proposed amendments foresee the obligation for the recognised organisations to establish clear and direct lines of responsibility and control between their central and regional offices, as well as the possibility to visit their regional branches during the periodic inspections of the organisations

Last element: the issue of the financial liability which was, on the Commission point of view, relatively secondary in the directive, has taken enormous importance during the negotiations between the Council and the European Parliament.

The problem was raised in relation with the issue of liability of classification societies arising from incidents. The principle of unlimited liability as regards gross negligence or wilful act or omission was not challenged. But the issue of responsibility in case of minor negligence was heavily discussed. The proposal of the Commission, supported by the European Parliament, recognised the right of limitation of liability, but certain Member States (in particular France, Italy and Germany), invoking legal national obstacles, strongly opposed the principle of a limitation of liability.

The third proposal in the ERIKA-I package, dealing with the phasing-out of single-hulled oil tankers, was by far the most controversial one. This directive is based on the assumption that double oil tankers offer a better protection in case of collision and grounding than single oil tankers. It also aims at reducing the gap between the calendar established by the Americans in the OPA 90 and the international calendar laid down in the Marpol Convention. In spite of the initial controversies, the outcome of this initiative has been extremely successful. Not only the Member States have

finally agreed on the objectives, but the discussion has also taken place within the IMO, the outcome being an amendment to the Marpol convention including a phasing-out scheme very close to the one proposed by the Commission.

The Erika II package, adopted in December 2000, includes three legislative proposals concerning the setting of a European monitoring traffic information system, of a European fund for limitation of liability (the COPE Fund), and finally, the setting of a European maritime safety agency.

The proposal about the setting of a European traffic monitoring system aims at giving to the Community, as a coastal entity, the possibility to monitor more closely maritime traffic off the coasts of Member states, as well as improving of response in case of an incident or an accident at sea. The measures proposed in the directive are rather different in nature, but may be divided into two main elements. The first element deals with the establishment of common rules for ship monitoring and reporting. The new proposal is built upon the existing, already approved, IMO reporting and routing systems. It requires Member States to equip with the appropriate infrastructure. In addition, the existing reporting requirements for dangerous cargoes will be simplified and based on electronic data transmission. Ships and national systems will have to make use of the latest technological developments such as, in particular, the transponders or AIS (Automatic Identification Systems), enabling automatic transmission of data (ships' identity, position, etc.) to shore-based coastal stations.

The proposed Directive also provides for the mandatory carriage of voyage data recorders, or "black boxes". This is a controversial issue because the Commission's proposal is broader than the existing international rules in the SOLAS Convention, as it extends the obligation to existing cargo ships. In addition, contrary to several Member States, the European Parliament, is extremely keen on requiring such equipment from all ships calling to EU ports as rapidly as possible. Under the pressure of the European parliament, the black boxes requirements have been introduced in the port state control directive although in substance, this directive, whose aim is

the control of existing safety standards, is not particularly appropriate for introducing new carriage requirements.

Another category of measures consists of various provisions aimed at increasing the monitoring and intervention powers of coastal states at sea. High-risk ships (for instance, ships which have been subject to an accident, ships which have been banned under port state control) will be closely monitored and the information concerning these ships will have to circulate among Member States. A number of prevention measures have been introduced, such as a possibility for Member States to prohibit vessels' departure from their ports in case of exceptionally bad weather conditions and the threat of a severe pollution, as well as a provision obliging Member States to ensure the availability of ports of refuge. It is worth mentioning that on this important issue, a few months after the Commission's proposal, the IMO has decided to tackle the issue of ports of refuge, using the same approach as the Commission.

Other provisions require masters to their elements is the obligation report incidents and accidents at sea, including oil spills or drifting containers observed at sea. Intervention at sea will also be more precisely defined including conditions for member states who intervene at sea; an obligation of cooperation in the emergency procedures has also been introduced for the ship masters but also for ship operators and cargo owners.

The second proposal in our Erika II package deals with the issue of liability and compensation in case of a major oil pollution. Indeed, it has rapidly appeared that the existing limits laid down at international level, through the CLC (Civil Liability Convention) and the IOPC (International Oil Pollution Compensation Fund) were not sufficient to compensate adequately the damages resulting from the ERIKA pollution. The Commission has therefore proposed to increase significantly the limits of compensation (up to 1 billion Euros, instead of around 200 million Euros in the existing regime). This objective would be reached through the creation of a European compensation fund (the COPE Fund) financed by oil companies receiving oil in Europe. The COPE Fund would provide

additional compensation on top of the existing IOPC regime, and would be based on the same criteria and similar procedures. This system will provide a fuller and quicker compensation to the victims of major oil spills. In addition, the proposal introduces financial penalties to any party (whether ship-owner, charterer, classification society or anybody else) which contributed to an accident by gross negligence or omission.

Finally, the third element of the Erika II package is the creation of a European maritime safety agency. The main purpose is to provide the Commission and the EU Member States with a technical support necessary for ensuring a uniform application of the EC maritime safety legislation. The Agency will have an independent status from the Commission and will not interfere in the decision-making procedures. The decision on the seat of the Agency will be decided separately (amongst the candidates are Genoa, Piraeus, Nantes and Lisbon).

As a conclusion, I would stress that the Commission is quite satisfied with the way the ERIKA-I and ERIKA-II packages have been processed within the European institutions. Indeed, most of the proposals will be adopted very soon. Another reason for being satisfied is that several ideas or measures proposed by the Commission, such as the acceleration of the phasing-out calendar for single-hulled oil tankers, the places of refuge and the setting-up of a complementary fund for the compensation of victims from oil pollution are being tackled at international level in the IMO. This shows the positive impact that the European Union can have on the development of international maritime legislation. Of course, the last question is what after Erika I and II, will there be an Erika III? This is not on our agenda: the legislative activity of the Commission should decrease, apart for certain measures concerning safety and liability of passenger ships. Priority should now be given to the monitoring of the proper implementation of the EC maritime safety legislation, the preparation of the setting up of the European maritime safety at sea, and the question of the adhesion of the Community to the IMO.

Thank you for your attention.



## GUIDO DE VITA

(c.s.)

Ringrazio monsieur Bergot per la sua brillante ed istruttiva relazione. Di particolare rilievo la parte relativa ai sinistri della navigazione, con interessanti approfondimenti sulle diverse tipologie di risarcimento e, ancora, sui programmi della Direzione *Energy and Transport*, che dovrà elaborare – dopo il primo Pacchetto Erika I – una serie di ulteriori iniziative per la salvaguardia del superiore valore della sicurezza della navigazione.

Prego ora il professor Camarda di svolgere la sua relazione su un tema, per tutti noi, di indubbio interesse: quello del registro navale. Del registro navale sappiamo tanto: chiunque si occupa di navi convive ogni giorno con prescrizioni, raccomandazioni, ispezioni, controlli su ancore, catene, motori. Sappiamo tante cose, ma sappiamo poco delle responsabilità dei registri, a causa della loro singolare peculiarità: pensiamo al R.I.Na, una società privata che svolge funzioni pubbliche.

